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Supreme Court, U.S.
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OFFICE OF THE CLERK

In The

Supreme Court of the United States

CRAIG DILWORTH,
registered voter and taxpayer,

Petitioner,

v.

CHRISTINE GREGOIRE, in her capacity as Governor of the State of Washington; SAM REED, in his capacity as Secretary of State of the State of Washington; and ROB McKENNA, in his capacity as Attorney General of the State of Washington,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of The State Of Washington

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Does the Judiciary of Washington State have authority by writ of mandamus to review acts of the state's Executive branch, where it is pleaded:

   a) the electoral process is thwarted by a judge's resignation from elective office for the express purpose of having the vacancy filled by gubernatorial appointment,

   b) an absurd and unconstitutional result is created by this application of the Governor's appointment duty, and

   c) fraud was committed to obtain and maintain this appointment?

2. Does a voter have a "remedy at law by way of the judicial conduct commission," where such bodies in all state and federal systems "are not a substitute for protecting your legal rights," as stated by Washington State's Commission on Judicial Conduct?

3. Is there no privity between Governor Gregoire and her Attorney General, such that standard claim preclusion does not apply – contrary to U.S. Supreme Court law?

4. Was due process violated where

   a) a motion to vacate judgment was "placed in the closed file and no further action taken as to it,"

   b) a motion to modify the clerk's decision on vacation also got "no action," as stated in an unsigned decision handwritten on its cover,

QUESTIONS PRESENTED – Continued

c) causes of action raising federal questions were never addressed,

d) mistake was made as to what the claims were,

e) allegations contested by the defendants were dismissed with no trial to resolve the disputes,

f) no reasons were given for denial of judicial estoppel, and

g) no reasons were given for denial of CR 11 sanctions?

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OPINIONS BELOW

The opinions dismissing the original actions in the Supreme Court of Washington State are unreported. At the time of this filing, they do not appear as either published or unpublished opinions with either Westlaw or Lexis-Nexis. No explanation has been given why the opinions remain unreported, or why they are not published as required by Washington State Constitution Article IV, § 21.[1]

Dilworth v. Gregoire and Reed is Washington State Supreme Court #81319-1; the opinion dismissing the original action is at Appendix 1 (A1). *Dilworth v. McKenna* is Washington State Supreme Court #81322-1; the opinion dismissing the original action is at A5.

JURISDICTION

The commissioner's rulings dismissing both original actions were filed on May 16, 2008. The orders denying the timely motions to modify the commissioner's ruling (rehearing), motions for judicial estoppel, and motions for CR 11 sanctions were filed by Department II of the Supreme Court of Washington State on September 4, 2008. The clerk's

[1] For contrast, see reported and published dismissal of original action *In re Election Contest Filed by Coday*, 156 Wn.2d 485 (2006 Wash. LEXIS 185), cert. denied by *Coday v. Reed*, 127 S.Ct. 444 (2006).

decision in *Dilworth v. Gregoire* that the motion to vacate judgment be "placed in the closed file and no further action taken as to it" was filed and sent on October 6, 2008. (A11). The motion to modify the clerk's decision on vacation of judgment was given "no action" by unsigned decision, handwritten on the motion's cover page, on October 14, 2008. (A13). This Court has jurisdiction under 28 USC § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

- Separation of Powers Doctrine: requiring tripartite system of government.
- Article Four of the United States Constitution:

  Section 2, clause 1: The citizens of each state shall be entitled to all privileges and immunities of citizens in the several states.

  Section 4. The United States shall guarantee to every state in this union a republican form of government, and shall protect each of them against invasion; and on application of the legislature, or of the executive (when the legislature cannot be convened) against domestic violence.
- Sixth Amendment to the United States Constitution, clause 2 and 3:

  This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be

the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

The Senators and Representatives before mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation, to support this Constitution; but no religious test shall ever be required as a qualification to any office or public trust under the United States.

- Fourteenth Amendment to the United States Constitution, Section 1:

  All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

- 18 USC § 241. Conspiracy against rights:

  If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or

If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured –

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

- 28 USC § 455(a), (b)(1), (b)(4), (c):

  (a) Any justice, judge, or magistrate [magistrate judge] of the United States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.

  (b) He shall also disqualify himself in the following circumstances: (1) Where he has a personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceeding; (4) He knows that he, individually or as a fiduciary, or his spouse or minor child residing in his household, has a financial interest in the subject matter in controversy or in a party to the proceeding, or any other interest that could be substantially affected by the outcome of the proceeding;

  (c) A judge should inform himself about his personal and fiduciary financial interests, and

make a reasonable effort to inform himself about the personal financial interests of his spouse and minor children residing in his household.

- Washington State Constitution Article Four, § 19:

  JUDGES MAY NOT PRACTICE LAW. No judge of a court of record shall practice law in any court of this state during his continuance in office.

- Revised Code of Washington, RCW 2.06.070. Original appointments/election of judges for Court of Appeals:

  Upon the taking effect of *RCW 2.06.010* through *2.06.100*, the governor shall appoint the judges of the court of appeals for each district in the numbers provided in *RCW 2.06.020*, who shall hold office until the second Monday in January of the year following the first state general election following the effective date of this act. In making the original appointments the governor shall take into consideration such factors as: Personal character; intellect; ability; diversity of background of experience in the practice of the law; diversity of political philosophy; diversity of educational experience; and diversity of affiliation with social and economic groups, for the purpose of establishing a balanced appellate court with the highest quality of personnel. At the first state general election after the effective date of this act there shall be elected from each district the number of judges provided for in *RCW 2.06.020*. Upon taking office the judges of each division elected shall come together at the direction of the chief justice and be divided by lot into three equal

groups; those of the first group shall hold office until the second Monday in January of 1973, those of the second group shall hold office until the second Monday in January of 1975, and those of the third group shall hold office until the second Monday in January of 1977, and until their successors are elected and qualified. Thereafter, judges shall be elected for the full term of six years and until their successors are elected and qualified, commencing with the second Monday in January succeeding their election: PROVIDED, HOWEVER, That if the governor shall make appointments to the appellate court from membership of the superior court, the governor shall, in making appointments filling vacancies created in the superior courts by such action, take into consideration such factors as: Personal character; intellect; ability; diversity of background of experience in the practice of the law; diversity of political philosophy; diversity of educational experience; and diversity of affiliation with social and economic groups, for the purpose of maintaining a balanced superior court with the highest quality of personnel.

- RCW 2.06.080. Vacancy, how filled:

  If a vacancy occurs in the office of a judge of the court, the governor shall appoint a person to hold the office until the election and qualification of a judge to fill the vacancy, which election shall take place at the next succeeding general election and the judge so elected shall hold the office for the remainder of the unexpired term.

STATEMENT OF THE CASE

A. Summary.

This case involves the intentional abuse of a Governor's appointment duty to change elective offices into *de facto* appointive offices. The appointment was obtained by fraud of both the office-holder and the appointee, who are both connected to the Anderson Hunter Law Firm, which has issues on the firm's professional misconduct pending before the judiciary.[2] A motive behind the resignation to create a vacancy for appointment was to use the prestige of judicial office to influence the pending judicial inquiry into the law firm's professional misconduct; this end was furthered by the appointee name-dropping his endorsement by Governor Gregoire in the pending case the day after the appointment was publicly announced. The original actions by writ of mandamus[3] in the Supreme Court of Washington were dismissed on the basis of lack of jurisdiction and that a "remedy at law" existed with the Commission on Judicial Conduct ("CJC").

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[2] The factual allegations contained in the Writs of Mandamus are presumed to be true, since no trial was ever held on the merits.

[3] The writ of mandamus in *Dilworth v. Gregoire and Reed* will be referred to as "*Writ*"; the writ of mandamus in *Dilworth v. McKenna* will be referred to as "*McKenna Writ*."

B. Claim #1: Unconstitutional Change from Elective Office to *De Facto* Appointive Office.

The people elect their judiciary in Washington State. William W. Baker resigned from his elective office of judge to the Court of Appeals "because he firmly believes in judicial appointments." (*Writ*, Claim #1, § 3.1 at 10, A34[4]). As admitted on Governor Gregoire's website, "appointees are often not challenged" at the next general election such that a purposeful vacation of elective office has the effect of depriving the voters of any choice of candidate in the next election. (*Writ* at 10-12, A35). Governor Gregoire was informed that Judge Baker's motive for resigning was to have his elective office filled by appointment. (*Writ* § 3.10 at 12, A35).

The *Writ* pleaded a constitutional abuse of the governor's appointment duty affecting voting rights where an office is vacated for the express purpose of having it filled by appointment, pleading that such a misapplication "produces an absurd, and . . . unconstitutional, result" by changing an elective office into a *de facto* appointive one. (*Writ*, at 3, A26). The *Writ* quoted Justice Scalia's concurrence in *Green v. Bock Laundry Machine Co.*, 490 U.S. 504, 527 (1989), where a fundamental principal of statutory and

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[4] The *Writ* is in the appendix for clarity on what the causes of action actually were, as the judgment mistakes or fails to address most claims.

constitutional construction is that a provision must be construed according to the intent of the whole constitution. The Commissioner's Ruling dismissing this action only cited the provisions allowing the governor "to fill vacancies in state offices," with no analysis of the intent of the Washington State Constitution as a whole to have an elected judiciary, holding the court has no authority to review any application of the provisions. (*Ruling*, A2).

C. Claim #2: Debasement of Prior Vote Rejecting the Appointee to Identical Judicial Office.

The voters rejected the appointee, J. Robert Leach, in the immediately preceding election for an identical office on the Court of Appeals. (*Writ*, Claim #2, at 13, A36). The *Writ* pleaded that a vote includes not only endorsement of a candidate, but also rejection of a candidate, citing *State ex rel Quick-Ruben v. Verharen*, 136 Wn.2d 888, 889, 969 P.2d 64 (1998), such that appointing a candidate whom the voters rejected had the effect of debasing the prior vote by gubernatorial veto. *Id.* The state court never addressed the claim of debasement of the prior vote.

D. Claim #3: Unequal Protection; Creation of a Special Class of Citizens.

Governor Gregoire admitted on her website that the judges currently on the bench have a say in who is selected for her gubernatorial appointments, such

that if a judge is allowed to resign from elected office for the purpose of having the vacancy filled by appointment, the judge creates a 'vote' for himself on who will assume the office outside of a general election. (*Writ*, Claim #3 at 14, A37). The state court did not address the claim of unequal protection through creation of a special class of citizen who can create a special 'election' in which only their vote is heard.

E. Claim #4: This Appointment Abridges Qualifications for Holding Judicial Office.

As with all courts in our nation, judges in Washington State are prohibited from practicing law. Mr. Leach's appointment became effective on March 1, 2008, at which time he was still practicing law as acknowledged by the Supreme Court of Washington on March 7, 2008. (*Writ*, Claim #4, at 15, A38). In the companion case *Dilworth v. McKenna*, which sought to compel a public quo warranto against Mr. Leach, Attorney General Rob McKenna conceded that the constitutional and statutory provisions prohibiting practice of law "relate to a judge's qualifications for holding office." (*McKenna's Motion to Dismiss*, p. 5). In *Dilworth v. McKenna*, the state court ruled that quo warranto could be brought based on failure to meet this qualification for holding office, but that mandamus to compel quo warranto lay against a county prosecutor and not the Attorney General. (A7). In *Dilworth v. Gregoire*, the state court did not address that this appointment abridged the qualifications for office.

F. Claims #5 and #12: Violation of Separation of Powers Where Governor Gregoire Made Decisions on Issues Still Pending Before the Judiciary.

The *Writ* pleaded that the appointment violated Mr. Dilworth's *Fourteenth Amendment* right to a fair trial, free from Executive Branch interference and influence in pending cause #80916-0, dealing with issues of professional misconduct by Mr. Leach. (*Writ*, Claim #5, at 17, A40). The day after his appointment was publicly announced, Mr. Leach name-dropped his endorsement by Governor Gregoire and his upcoming status as a judge in cause #80916-0. (*Id.* § 7.14 at 19).

The *Writ* pleaded that to appoint Mr. Leach, Governor Gregoire had to make judicial decisions on issues of his professional misconduct that are still before the Judiciary, in violation of the *Separation of Powers Doctrine*. (*Writ*, Claim #12, at 32, A55). On March 19, 2008, Governor Gregoire's Office decided that Mr. Leach was not involved in a conflict of interest, 'holding' that the two representations at issue in cause #80916-0 are "two separate and unrelated matters." (*Response to Motion to Dismiss,* at 19). The March 19, 2008 letter also stated it was the Governor's duty to "not get involved in private litigation." The state court never addressed the claims based on violation of the *Separation of Powers Doctrine*.

G. Fraud Committed to Obtain the Appointment; Conspiracy Against Rights.

The *Writ* specifically pleaded fraud depriving Governor Gregoire of discretion on this appointment. Judge Baker fraudulently informed Governor Gregoire he was retiring "for health reasons." (*Writ*, § 3.2 at 11, A34). Mr. Leach misrepresented under oath on his *Governor's Office's Uniform Judicial Questionnaire* that judicial inquiry into his misconduct in cause #80916-0 had ended, when it was and still is ongoing. (*Writ*, Claim #7, at 22, A45). The state court did not address the fraud by Judge Baker or the perjury by Mr. Leach to obtain the appointment.

The *McKenna Writ* also pleaded the fraud by Judge Baker and the perjury by Mr. Leach as part of their conspiracy to deprive the people suffrage and deprive Mr. Dilworth of a fair trial in the case involving the professional misconduct of their law firm, and sought to compel McKenna to bring action under 18 USC § 241. (*McKenna Writ*, § 3.6 and § 3.7, p. 5). State Attorney General McKenna fraudulently referred Mr. Dilworth to the CJC as the appropriate agency to deal with these issues. (*McKenna Writ* at 2). The state court did not address the fraud involved in referring Mr. Dilworth to the CJC for both the conspiracy against rights and quo warranto. (A5). The issue that no commission on judicial conduct is a remedy at law was raised in the motions to modify the commissioner's ruling, at 18 in *Dilworth v. Gregoire* and at 10 in *Dilworth v. McKenna*.

H. Due Process on Mistake of Claims.

The question as to whether due process is violated where the Ruling dismissed claims on the mistake that they sought adjudication of the professional misconduct issues in cause #80916-0 – when they did not – was raised in *Dilworth v. Gregoire* in the *Motion to Modify Commissioner's Ruling* at 20. This mistake was also raised in the *Motion to Vacate* at 9. The state court never addressed this mistake in dismissing claims arising from:

(a) Mr. Leach's perjury on his *Governor's Office's Uniform Judicial Questionnaire* that judicial review of issues of his professional misconduct in cause #80916-0 had ended (**Claim #7**, *Writ* at 22, A45),

(b) the motive of Judge Baker and Mr. Leach to use the prestige of the appointment to shield their law firm of Anderson Hunter from further findings of misconduct (**Claim #5**, *Writ* at 17, A40), and

(c) neglect of duty by Governor Gregoire in selecting Mr. Leach given her meeting with Mr. Dilworth in 2006, during which she acknowledged Mr. Leach had made knowing misrepresentations to the court (**Claim #8**, *Writ* at 29, A52).

I. Due Process on Dismissal of Claims in Contention Without Addressing Claims.

The issue that most claims were dismissed without ever being addressed by the state court was raised in the *Motion to Modify* at 2-4 and 18-19, and in the *Motion to Vacate* at 6-7. The issue that it is irregular to dismiss causes of action where the allegations are contested by the defendants was raised in the *Reply to Response to Motion to Modify* at 304, and in the *Motion to Vacate* at 9-10. The state court never addressed the due process question of dismissing cognizable causes of action with no reasons given or in dismissing contested allegations before any trial to resolve the disputes.

J. Judicial Estoppel and Privity Between Officers of the Same Government.

After the Commissioner's Rulings and during the proceedings on the motions to modify, Mr. Dilworth sought standard claim preclusion via a motion for judicial estoppel based on inconsistent positions taken by Governor Gregoire and Secretary of State Reed with those taken by Attorney General McKenna, on which a judgment was had. Governor Gregoire and Secretary of State Reed asserted that claim preclusion does not apply because they are all "different parties." (*Response to Motion for Judicial Estoppel*, p. 1). That this Supreme Court has that held officers of the same government have privity between them, and that Washington State's government must follow the national model under the

Supremacy Clause, was raised in the *Reply to Response to Motion for Judicial Estoppel* at 1 and in the *Motion to Vacate* at 6-7. The state court gave no reasons to support the denial of judicial estoppel. (A9).

K. No Reasons Given to Support Denial of CR 11.

Motions for CR 11 sanctions were brought by Mr. Dilworth during the proceedings on the motions to modify and motions for judicial estoppel, and so were before the panel and not the Commissioner. The panel gave no reasons to support the denial of CR 11 sanctions. (A9, A10).

L. Motion to Vacate Judgment Never Heard.

On October 6, 2008, Mr. Dilworth submitted a *Motion to Vacate Judgment* under CR 52 (entry of necessary findings and conclusions) and CR 60. The *Motion to Vacate* raised concerns under 28 USC § 455 that the proceedings were void due to Justice Stephens' personal interest in the outcome of the case given her appointment to judicial office by Governor Gregoire and her subsequent unopposed election bid, citing *Liljeberg v. Health Services Acquisition Corp.*, 486 U.S. 847, 865 (1987). (*Motion to Vacate* at 10-14). The *Motion to Vacate* also raised concerns involving Justice Stephens' and Justice Fairhurst's association with Judge Baker through his private political organization. (*Motion to Vacate* at 14). Which Division of the state court would hear the motions to modify,

motions for judicial estoppel, and motions for CR 11 sanctions were not revealed until entry of the Order. (*Motion to Vacate* at 3). On the basis that motions to vacate under the civil rules are not available in original actions before the Supreme Court of Washington, the *Motion to Vacate* was never heard, just "placed in the closed file and no further action taken as to it." (A11-12).

On October 14, 2008, Mr. Dilworth submitted a motion to modify Clerk Carlson's decision to bury the *Motion to Vacate* with no review on its merits, citing universal law that allows vacation of final judgments, as well as equivalent appellate rules for relief from mistake and fraud. (A58). In a handwritten, unsigned 'decision' on the cover of the motion, someone from the court decided that the clerk's decision was "no ruling" subject to review, and took "no action" on the motion, citing RAP 12.4(a) that deals with reconsideration – not vacation. (A13). As the motion to modify the clerk's decision on the vacation of judgment is listed on the docket as "not filed," the full text of the motion has been reproduced at A58.

REASONS FOR GRANTING THE PETITION

This Court should grant the petition because the state court decision conflicts with decisions of all other state courts of last resort and of United States courts of appeals, conflicts with decisions of this Court, and has so far departed from the accepted and

usual course of judicial proceedings as to call for this Court's supervisory power. Supreme Court Rule 10(a), (b), and (c).

I. QUESTION ONE: THE JUDICIARY HAS FUNDAMENTAL AUTHORITY TO REVIEW.

A. Split With New York, Where Such Resignations Would Render "All Positions . . . Appointive Upon the Resignations [of the] Judges."

The Supreme Court of Washington decision that there is no cause of action by a voter for a judge who resigns from elective office for a private political purpose is in direct conflict with established law from the highest court of New York State, which also has an elected judiciary. In *Hurowitz v. Board of Elections of the City of New York*, 53 N.Y.2d 531, 535, 426 N.E.2d 746, 443 N.Y.S.2d 54 (1981), a judge's plan to resign from his elected office in order to accept an identical office on the same court was found to be "an abuse of the elective system" because it "not only allows himself multiple chances to be re-elected, but also assures . . . **a vacancy will occur**. . . . should this type of conduct become the norm, **it would be possible that all positions would be appointive upon the resignations** and shiftings of the other Judges; only at the next general election would the people be given a chance to vote, the effect of which may well be to merely approve the appointment. . . . the likelihood of such a result portends abuse of the elective system." (emphasis added).

B. Conflict With Supreme Court and All State Law on Construing Statutes and Constitutions, Where the Intent of the Whole Must Be Considered.

The Washington State Supreme Court decision that it lacks authority to review acts of the Executive branch by writ of mandamus, because a literal reading of the provision in isolation does not specifically prohibit the appointment, is in conflict with the most fundamental concept of statutory and constitutional construction that the intent of the whole must be considered.

The Washington State Supreme Court decision that it lacks authority to review, on constitutional grounds, a potential misapplication of a statutory provision is in conflict with all state law on statutory construction, including Washington State, and the law of this Court. *See, e.g.*, *Green,* supra, at 527 (1989) ("We are confronted here with a statute which, if interpreted literally, produces an absurd, and perhaps unconstitutional, result."); *Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 454 (1989); *State ex rel Stephan v. Carlin, Governor of the State of Kansas*, 236 Kan. 45, 58, 687 P.2d 622 (1984) ("Mandamus is a proper remedy where the essential purpose of the proceeding is to obtain an authoritative interpretation of the law for the guidance of the governor in his administration of the public business of the state"); *Hurowitz*, supra, at 533 ("It is a basic tenet of both constitutional and statutory construction that the general intent of an article or statute

should govern the interpretation of any one part."); *Schwarz v. State*, 85 Wn.2d 171, 174, 531 P.2d 1280 (1975) ("On numerous occasions this court has indicated that a statute should be construed as a whole in order to ascertain the legislative purpose and thus to avoid unlikely, strained or absurd consequences which could result from a literal reading, and that the spirit or purpose of legislation should prevail over express but inept language used therein.").

C. Conflict With Supreme Court and State Law on Mandamus Where Fraud and Abuse of Discretion Is Pleaded.

The Washington State Supreme Court decisions that it lacks authority by mandamus, where both writs pleaded fraudulent disposition, is in direct conflict with established law on mandamus in state courts, including Washington State, and this Court. *See, e.g., City of Seat Pleasant v. Jones*, 364 Md. 663, 673, 774 A.2d 1167 (2001) ("Courts have the inherent power, through the writ of mandamus, by injunction, or otherwise, to correct abuses of discretion and arbitrary, illegal, capricious, or unreasonable acts"); *State ex rel Brown v. Board of Dental Examiners*, 38 Wash. 325, 328, 80 P. 544 (1905) ("courts will compel by mandamus the honest performance of official duty, and if, under pretense of exercising discretion, the power is exercised with manifest injustice or is grossly abused, or duty is avoided, the courts will grant relief. . . . If it acts arbitrarily or fraudulently, or through unworthy or selfish motives, or conspires

against the rights of individuals"); *Ben-Neth v. Ind. Sentence Review Board*, 49 Wn. App. 39, 42, 740 P.2d 855 (1987); *Garfield v. United States ex rel Goldsby*, 211 U.S. 249, 262, 29 S.Ct. 62, 53 L. Ed. 168 (1908) ("There is no place in our constitutional system for the exercise of arbitrary power.").

II. QUESTION TWO: NO COMMISSION ON JUDICIAL CONDUCT IS A REMEDY AT LAW.

The Supreme Court of Washington decisions that the state's Commission on Judicial Conduct is a "remedy at law" is in direct conflict with the limits in authority of all such bodies in all state and federal systems. Such bodies are only authorized to enforce a judicial code of ethics and are not a remedy at law. Washington State's Commission on Judicial Conduct specifically states it is not a remedy at law that could substitute for mandamus proceedings before the judiciary to protect civil rights or enforce criminal laws,

> **We are not a substitute for protecting your legal rights.** You should contact a lawyer in private practice to protect your rights in civil matters or contact the local prosecuting attorney if you think criminal laws have been broken.
>
> (Commission on Judicial Conduct letter of March 18, 2008, at Appendix 5 of *Motion to Modify*).

III. QUESTION THREE: THERE IS PRIVITY BETWEEN OFFICERS OF THE SAME GOVERNMENT.

The prevailing position in the Supreme Court of Washington that Governor Gregoire and Secretary of State Reed are "different parties" from Attorney General McKenna, while being represented by Attorney General McKenna, is contrary to Supreme Court law. Officers of the same government have privity between them, such that standard claim preclusion like judicial estoppel applies. *See, e.g., Sunshine Anthracite Coal, Co. v. Adkins, Collector of Internal Revenue*, 310 U.S. 381, 403, 60 S.Ct. 907 (1940) ("There is privity between officers of the same government so that a judgment in a suit between a party and a representative of the [government] is *res judicata* in relitigation of the same issue between that party and another officer of the government.").

IV. QUESTION FOUR: DUE PROCESS AND DEPARTURE FROM ACCEPTED COURSE OF JUDICIAL PROCEEDINGS.

A. Conflict With All State and Federal Courts that Allow Vacation from Final Judgments.

The decision to take no action on the *Motion to Vacate* is in conflict with decisions in all state and federal courts, where universal law allows motions to vacate original judgments. That the court of first instance is normally an appellate court does not

prohibit the use of civil rules in original actions before it. *See, e.g.*, Washington State's RAP 16.2(b) that specifically adopts "the Superior Court Civil Rules" in original actions, and Supreme Court Rule 17(2) that specifically adopts "the Federal Rules of Civil Procedure" for original actions before this Court. *State v. Shove*, 113 Wn.2d 83, 88, 776 P.2d 132 (1989) ("Final judgments in both criminal and civil cases may be vacated.").

B. Conflict with All State and Federal Courts Where Decisions Must Be Signed, and Decisions Affecting Substantial Rights Can Be Reviewed.

The unsigned, handwritten 'decision' holding that Clerk Carlson's decision to place the *Motion to Vacate* in the closed file with no action, was "no ruling" that could be reviewed is in conflict with the usual course of judicial proceedings in all state and federal courts. It is fundamental to judicial proceedings that decisions affecting substantial rights can be reviewed. Due process requires the opportunity to be heard.

The unsigned 'decision' is also a departure, as is the "no ruling" letter from Clerk Carlson. *State v. Aleshire*, 89 Wn.2d 67, 70, 568 P.2d 799 (1977) ("The orderly administration of justice should not be predicated upon letters to counsel.").

C. Conflict With All State and Federal Courts Where Reasons Must Be Given For Dismissal of Claims.

The state court dismissal without any mention of most of the causes of action is in conflict with law from all state and federal courts that require reasons for dismissal of claims. Without reasons, decisions are arbitrary and capricious. *Couvea v. American Airlines, Inc.*, 218 F.3d 1078, 1081 (9th Cir. 2000) (An "order that fails to disclose the district court's reasons . . . increases the danger that litigants, whether they win or lose, will perceive the judicial process to be arbitrary and capricious. Accordingly, this court has held that when multiple grounds are presented by the movant and the reasons for the district court's decision are not otherwise clear from the record, it may vacate a summary judgment and remand for a statement of reasons. *See, e.g., Van Bourg, Allen, Weinberg & Roger v. NLRB*, 656 F.2d 1356, 1357 (9th Cir. 1981).").

If any cause of action shows a ground for relief, dismissal is error. *State ex rel West v. City of Seattle*, 50 Wn.2d 94, 96, 309 P.2d 751 (1957) ("it is but trite to say that if the facts pleaded show any ground of relief, the general demurrer must be overruled.").

D. Conflict With All State and Federal Courts Where Mistake Can Be Remedied.

The state court dismissal of the *Writ* on the mistake of what the claims were, caused the actual

causes of action to never be addressed. It is fundamental to due process that a decision be based on what the case is actually about. *See, e.g., Goldberg v. Kelly*, 397 U.S. 254, 271 (1970), other grounds superceded by statute as stated in *State ex rel K.M. v. W. Va. Dep't of Health & Human Res.*, 212 W. Va. 783 (2002) (Due process requires a decision be based on issues actually presented). As stated above, all courts allow mistakes to be remedied in both original actions (vacate) and in appeals (recall of mandate).

E. Conflict With Universal Law on Dismissal of Actions, Where Contested Allegations Go to Trial.

The Defendants contested the allegations in the claims for relief. *E.g.*, on the allegation of abuse of discretion, Governor Gregoire asserted she exercised discretion; on the allegations of violation of the *Separation of Powers Doctrine*, Governor Gregoire asserted she did not violate the doctrine. (*Response to Motion to Modify Commissioner's Ruling*, at 8 and 6 respectively). The whole point of judicial proceedings is to resolve such contested disputes.

The state court dismissal where allegations that justify relief are contested, is in conflict with fundamental law that

> dismissal can only be had if the facts are not in contention and there is no allegation that would justify relief. *Reid v. Pierce County*, 136 Wn.2d 195, 201-02, 961 P.2d 333, (1998)

("Dismissal of a claim . . . is appropriate only if "it appears beyond a reasonable doubt that no facts exist that would justify recovery." Furthermore, we accept as true the allegations in a plaintiff's complaint and any reasonable inferences therein.").

F. Conflict With Laws to Protect the Integrity of Proceedings; Claim Preclusion and CR 11.

The state court denial of judicial estoppel and CR 11 sanctions with no reasons is in conflict with due process. *Goldberg*, supra ("the decision maker should state the reasons for his determination"). The purpose of judicial estoppel is "to preserve respect for judicial proceedings" *Arkison v. Ethan Allen, Inc.*, 160 Wn.2d 535, 538, 160 P.3d 13 (2007). Universal CR 11 also prevents abuse by sanctioning parties for filing that are not well-grounded in fact or warranted by existing law. "The due administration of justice requires that statements to the court by attorneys and its other officers shall be such that the court may rely upon their truthfulness with absolute confidence." *Barber v. Company*, 80 N.H. 507, 512 (1923), cited by *State ex rel Macri v. City of Bremerton*, 8 Wn.2d 93, 105, 111 P.2d 612 (1941). *Nix v. Whiteside*, 475 U.S. 157, 169 (1986) ("[attorney's] duty is limited to legitimate, lawful conduct compatible with the very nature of a trial as a search for truth."). No protection to a litigant or to the court can be afforded where

judicial estoppel and CR 11 sanctions are arbitrarily denied.

ARGUMENT WHY REVIEW SHOULD BE GRANTED

I. The Right to Vote is Fundamental, as is the Judiciary's Authority to Protect this Right.

The state court is wrong. The court has fundamental authority to review this sophisticated mode of thwarting the electoral process. *Reynolds v. Sims*, 377 U.S. 533, 563 (1964) (the Judiciary has authority to guard against both "sophisticated as well as simple-minded modes" of denial or debasement of the right to vote). Without such authority, all rights are illusory. *Wesberry v. Sanders, Governor of Georgia*, 376 U.S. 1, 17 (1964) ("Other rights, even the most basic, are illusory if the right to vote is undermined.").

If condoned, this misapplication of Governor Gregoire's appointment duty could become the norm nationally for both state and federal offices. All elective offices with an appointment provision to fill vacancies could become *de facto* appointive offices upon the resignations of the office holders. The intent of appointment provisions in elective offices is to afford continuation of government where an unexpected vacancy occurs – not for the office holders to abandon their terms of office in order to trigger the appointment provisions.

The reality is that gubernatorial appointments to judicial offices are not challenged in the next election, as admitted on Governor Gregoire's website, and as experienced by Justice Stephens. This reality rendered the next election for the judicial office meaningless, since it eliminated any competition, with the result that the voters had no choice but "to merely approve the appointment," as warned of in *Hurowitz*, supra.

The Executive branch of Washington State asserts that "an argument as to whether the election would be *competitive* . . . is irrelevant to a claim" that the electoral process is being thwarted. (*McKenna Response to Motion to Modify* at 8). This defies United States and international standards on free and fair elections. The very definition of "meaningful elections" ***is*** "competitive elections." (United States Department of State, *Free and Fair Elections*[5]). "For an election process to be *free*, citizens must have the right and opportunity *to choose*." (Emphasis added) *Id.*

The right to vote is "undermined as much by limiting whom the people can select as by limiting the franchise itself." *Powell v. McCormack*, 395 U.S. 486, 547, 89 S.Ct. 1944 (1969). "[I]t is essential to examine in a realistic light the . . . impact on voters," *Bullock v. Carter*, 405 U.S. 134, 143-44 (1972).

An appointment provision should not be used to veto a prior vote rejecting the candidate. The right to

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[5] http://usinfo.state.gov/dd/eng_democracy_dialogues/elections/elections_essay.html

vote includes the right to reject. *Quick-Ruben*, supra, at 889 ("the one clear result of the election was that the voters rejected the petitioner."). An appointment provision cannot abridge the qualifications of elective office. *State ex rel Carrol v. Munro*, 52 Wn.2d 522, 533, 327 P.2d 729 (1958) (If a candidate "is not eligible . . . for an office, [the candidate] is not eligible for *appointment* to the office.").

Once a vote on a state office is granted to the electorate, infringement of the right becomes a federal question. *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665, 86 S.Ct. 1079 (1966).

II. Washington State is Not Following Our United States Model of Government.

The Supreme Court of Washington decision allows an aberrant form of state government that must be corrected. Washington's Executive officers are applying statutory provisions free from any Judicial check that the applications are absurd and unconstitutional. Judicial proceedings are infringed upon by Executive pre-'adjudication' of the issues, rendering null the force and effect of the pending decision by the Judiciary. Executive officers in the state are legally "different parties" and are not bound by judgments obtained by other officers of the same government. Any dissent by a citizen seeking to enforce their civil rights or have the criminal laws enforced are channeled to the Commission on Judicial Conduct as a "remedy at law," when this agency itself

states "We are not a substitute for protecting your legal rights."

Article Four of our United States Constitution is a guarantee that the federal government will ensure a republican form of state government and that citizens of every state enjoy the national privileges of citizens in the several states. Since the state court has not followed the *Supremacy Clause* or the *Separation of Powers Doctrine* to guarantee its citizens a republican form of state government or the privileges enjoyed by citizens of all other states, this Court should accept review to honor the federal guarantee.

III. Only this Court Can Supervise Due Process and Remedy Abuses in Original Actions in the Supreme Court of Washington State.

Because these were original actions initiated in the Supreme Court of Washington, the abuses of due process have not been reviewed outside of the court of first instance where they occurred. The compelling circumstance of a state's highest court making blatant errors of due process, while acting as a court of first instance, justifies this Court granting relief by certiorari.

The *Motion to Vacate* was never heard. The motion to have it heard was received, but never filed. Decisions affecting substantial rights were deemed by an unsigned note to be "no ruling" capable of review. Cognizable claims for relief were never addressed. Contested allegations were never tried. Reasons for

denial of requested relief were never given. Mistake and fraud were never remedied.

Requisites of due process include the opportunity to be heard in a meaningful manner, decisions resting on the actual facts and legal claims of the case, a statement of reasons for the decisions, and impartial decision makers *Goldberg*, supra, at 267, 271.

As this Court stated in *Wisconsin v. Constantineau*, 400 U.S. 433, 436, 91 S.Ct. 507 (1971), "It is significant that most of the provisions of the Bill of Rights are procedural, for it is procedure that marks much of the difference between rule by law and rule by fiat."

CONCLUSION

For the reasons stated above, this Court should grant this Petition and order briefing and argument on the case in this Court.

Dated: December 3, 2008.

Respectfully submitted,

CRAIG DILWORTH
Pro se
3225 Shore Avenue
Everett, WA 98203

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CRAIG DILWORTH, Petitioner, v. CHRISTINE GREGOIRE and SAM REED, Respondents.	NO. 81319-1 RULING DISMISSING ORIGINAL ACTION (Filed May 16, 2008)

By an action styled as a petition for election challenge and writ of mandamus, Craig Dilworth seeks to invoke the original jurisdiction of this court directed to Governor Christine Gregoire and Secretary of State Sam Reed. The Matter is now before me for an initial determination whether the petition should be decided by this court, transferred, or dismissed. RAP 16.2. Having reviewed the record and the parties' pleadings, I conclude that the matter must be dismissed.

Mr. Dilworth seeks to void the governor's appointment of J. Robert Leach as a judge of Division One of the Court of Appeals to replace retired Judge William Baker for the remainder of the latter's term ending in 2008. Mr. Dilworth also wishes to compel the secretary of state to remove Judge Leach's name from all ballots and election listings as an incumbent judge and to keep Judge Baker's former position vacant for this fall's election.

The basis for Mr. Dilworth's action is his contention that Judge Leach is unfit for judicial office for various reasons, most of them connected with Mr. Dilworth's ongoing litigation in another matter currently before this court. Nos. 80916-0 & 81173-3. Judge Leach formerly represented the adverse party in that litigation and withdrew from representing his former clients. Mr. Dilworth's allegations that Judge Leach and his former law firm engaged in sanctionable misconduct are part of those matters. Mr. Dilworth further alleges Judge Baker retired early in order to circumnavigate [sic] the election system so Judge Leach (purportedly a member of Judge Baker's former law firm) could be appointed to the Court of Appeals.

This is not a proper original action for Mandamus. Mandamus will not lie to compel a discretionary act or to direct a state officer to generally perform his or her duties, constitutional or otherwise. *Walker v. Munro*, 124 Wn.2d 402, 408, 879 P.2d 920 (1994); *Gerberding v. Munro*, 134 Wn.2d 188, 195, 949 P.2d 1366 (1998). The appointment of judges to fill vacancies on the Court of Appeals is a matter clearly falling within the governor's discretion. RCW 2.06.080; *see also* CONST. art. III, § 13 (governor's general authority to fill vacancies in state offices). Here, the governor exercised her discretion in choosing Judge Leach from among multiple applicants. Judge Leach will hold office until the next scheduled election, at which time the position will appear on the ballot. RCW 2.06.080. Mr. Dilworth cannot undo the

governor's discretionary appointment by way of mandamus. It will be up to the voters to determine whether Judge Leach should remain in his appointed position, if he seeks to do so.

With regard to the secretary of state, the secretary has no duty regarding the governor's exercise of the appointment power. And while the secretary has a role in elections, the judicial election is several months away, and it is unclear if anyone will file for the position currently held by Judge Leach, including the judge himself. Consequently, Mr. Dilworth's "election challenge" is not ripe for purposes of an original action. He also fails to point to a particular duty that the law especially obligates the secretary of state to perform. RCW 7.16.160; *In re Pers. Restraint of Dyer,* 143 Wn.2d 384, 398, 20 P.3d 907 (2001). And this court cannot issue mandamus to direct a general course of conduct. *Eugster v. City of Spokane*, 118 Wn. App. 383, 404, 76 P.3d 741 (2003).

Finally, mandamus will not lie in any situation where there exists a plain, speedy, and adequate remedy at law. *Farm Bureau Fed'n v. Reed*, 154 Wn.2d 668, 672, 115 P.3d 301 (2005); *Eugster*, 118 Wn. App. at 402. To the extent Mr. Dilworth is attacking Judge Leach for his previous role in pending litigation, or for any alleged impropriety in his role as a judge, Mr. Dilworth has available remedies through the pending appeal process or by way of the judicial conduct commission.

In sum, Mr. Dilworth fails to show circumstances justifying extraordinary relief by original action in this court.

The original action is therefore dismissed.[1]

/s/ Steven Goff
COMMISSIONER

May 16, 2008

[1] Mr. Dilworth filed a separate original action regarding these matters directed at the attorney general. I also dismissed that action as inappropriate. No. 81322-1.

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CRAIG DILWORTH, Petitioner, v. ROB McKENNA, Respondent.	NO. 81322-1 RULING DISMISSING ORIGINAL ACTION (Filed May 16, 2008)

By an action styled as a petition for writ of mandamus, Craig Dilworth seeks to invoke the original jurisdiction of this court directed to Attorney General Rob McKenna. The matter is now before me for an initial determination whether the petition should be decided by this court, transferred, or dismissed. RAP 16.2. Having reviewed the record and the parties' pleadings, I conclude that the matter must be dismissed.

Mr. Dilworth seeks to compel the attorney general to initiate or cause to be initiated, several actions against Judge J. Robert Leach of Division One of the Court of Appeals and his predecessor, retired Judge William W. Baker, under several theories, including perjury (with regard to Judge Leach alone), violation of laws prohibiting judicial officers from practicing law (Judge Leach), and election fraud (Judges Leach and Baker). Mr. Dilworth grounds his original action on allegations that Judge Leach was untruthful in completing the governor's judicial appointment questionnaire regarding alleged lawyer misconduct

during litigation presently before this court to which Mr. Dilworth is a party (Nos. 80916-0 & 81173-3), that Judge Leach continued to represent Mr. Dilworth's adversary before this court after the judge's appointment, that Judge Leach invoked his newly appointed position to gain an advantage in this court, and that Judge Baker contrived with Judge Leach to pave the way to the latter's appointment by retiring early.

Mr. Dilworth submitted the foregoing allegations to the attorney general, urging him to act. The attorney general declined, recommending that Mr. Dilworth relate his complaints to the judicial conduct commission and apparently forwarding his materials to the assistant attorney general assigned to that disciplinary body. Mr. Dilworth then filed this original action.

The law governing extraordinary relief is well established. A court may issue a writ of mandamus "to compel the performance of an act which the law especially enjoins as a duty resulting from an office." RCW 7.16.160; *In re Pers. Restraint of Dyer*, 143 Wn.2d 384, 398, 20 P.3d 907 (2001). But a court may not issue mandamus to compel a discretionary act. *Dyer*, 143 Wn.2d at 398. Nor may mandamus be issued to direct a general course of conduct, *Eugster v. City of Spokane*, 118 Wn. App. 383, 404, 76 P.3d 741 (2003). Furthermore, mandamus will not lie in any situation where there exists a plain, speedy, and adequate remedy at law. *Farm Bureau Fed'n v. Reed*,

154 Wn.2d 668, 672, 115 P.3d 301 (2005); *Eugster v. City of Spokane*, 118 Wn. App. at 402.

In light of these principles, Mr. Dilworth's original action is clearly inappropriate. The attorney general's authority with regard to criminal prosecutions is statutorily limited. The attorney general may become involved in a criminal prosecution at the request of a county prosecutor. RCW 43.10.030(4). Furthermore, at the governor's request, the attorney general will investigate violations of criminal law and, in doing so, if he finds a county prosecutor fails or neglects to enforce laws as directed by the attorney general, the attorney general may initiate and prosecute criminal matters at his discretion. RCW 43.10.090. None of those limited circumstances are present here. And Mr. Dilworth cannot rely on mandamus to compel the attorney general to act generally as a prosecutor *See Eugster*, 118 Wn. App. at 404 (mandamus cannot direct general course of conduct). Moreover, to the extent that Mr. Dilworth seeks to compel the attorney general to institute a public quo warranto action against Judge Leach, that also is a function of the prosecuting attorney in the superior court of the proper county. RCW 7.56.020. *See State ex rel. Quick-Ruben v. Verharen*, 136 Wn.2d 888, 893-96, 969 P.2d 64 (1998). Finally, to the extent Mr. Dilworth is attacking Judge Leach for his previous role in pending litigation, or for any alleged impropriety in his role as a judge, Mr. Dilworth has available remedies through the pending appeal process or by

way of the judicial conduct commission. *See Farm Bureau Fed'n*, 154 Wn.2d at 672.

In sum, Mr. Dilworth fails to show the attorney general neglected a clear nondiscretionary duty to act that would justify extraordinary relief by original action in this court.

The original action is therefore dismissed.[1]

/s/ Steven Goff
COMMISSIONER

May 16, 2008

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[1] Mr. Dilworth filed a separate original action regarding these matters directed at the governor and secretary of state. I also dismissed that action as inappropriate. No. 81319-1.

THE SUPREME COURT OF WASHINGTON

CRAIG DILWORTH, Petitioner, v. CHRISTINE GREGOIRE and SAM REED, Respondents.	NO. 81319-1 **ORDER** (Filed Sep. 4, 2008)

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Chambers, Fairhurst and Stephens, considered this matter at its September 3, 2008, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling and Motion for Judicial Estoppel are denied. The Petitioner's Motions for CR 11 Sanctions are also denied.

DATED at Olympia, Washington this 4th day of September, 2008.

For the Court

/s/ Gerry L. Alexander
CHIEF JUSTICE

THE SUPREME COURT OF WASHINGTON

CRAIG DILWORTH, Petitioner, v. ROB McKENNA, Respondent.	)	NO. 81322-1 **ORDER** (Filed Sep. 4, 2008)

Department II of the Court, composed of Chief Justice Alexander and Justices Madsen, Chambers, Fairhurst and Stephens, considered this matter at its September 3, 2008, Motion Calendar and unanimously agreed that the following order be entered.

IT IS ORDERED:

That the Petitioner's Motion to Modify the Commissioner's Ruling and Motion for Judicial Estoppel are denied. The Petitioner's Motions for CR 11 Sanctions are also denied.

DATED at Olympia, Washington this 4th day of September, 2008.

For the Court

/s/ Gerry L. Alexander
CHIEF JUSTICE

THE SUPREME COURT
STATE OF WASHINGTON
[SEAL]

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October 6, 2008

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Re: Supreme Court No. 81319-1 – Craig Dilworth v. Christine Gregoire and Sam Reed

Counsel and Mr. Dilworth:

The Petitioner's "MOTION TO VACATE JUDGMENT" was received on October 6, 2008. The motion seeks relief under CR 52(d) and CR 60, but those rules only apply to civil proceedings in a superior court. The Rules of Appellate Procedure do not allow for the filing of a motion to vacate. Further, this matter was final with the Department's entry of an order denying the motion to modify on September 4,

2008. Therefore the motion will be placed in the closed file and no further action taken as to it.

Sincerely,

/s/ Susan L. Carlson
Susan L. Carlson
Supreme Court Deputy Clerk

SLC:alb

[Handwritten, unsigned note from Court on original cover sheet: "10/14/08 No action, placed in closed file, no ruling was entered that would be subject to RAP 17.7. *see also the last sentence of RAP 12.4(a)"]

Original Action #81319-1:

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CRAIG DILWORTH,
Registered voter in Snohomish County, Washington
Petitioner

vs.

CHRISTINE GREGOIRE,
Governor of the State of Washington

and

SAM REED,
Secretary of State of the State of Washington
Respondents

MOTION TO MODIFY CLERK'S RULING DISMISSING MOTION TO VACATE JUDGEMENT IN AN ORIGINAL ACTION, NOT AN APPEAL

(Received Oct. 14, 2008)

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* * *

[condensed format copy from electronic original; appendix omitted]

Original Action #81319-1

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CRAIG DILWORTH,
Registered voter in Snohomish County, Washington

Petitioner

vs.

CHRISTINE GREGOIRE,
Governor of the State of Washington

and

SAM REED,
Secretary of State of the State of Washington

Respondents

AMENDED PETITION FOR ELECTION CHALLENGE; WRIT OF MANDAMUS TO COMPEL GOVERNOR TO WITHDRAW VOID APPOINTMENT AND MANDAMUS TO COMPEL SECRETARY OF STATE TO REMOVE J.ROBERT LEACH AS INCUMBENT IN NEXT ELECTION

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[*1]

A. <u>Issues.</u>

1. Where "In our State the people elect their judiciary . . . [and] we judges owe our tenure to the people themselves – not the politicians,"[1] and where Judge William W. Baker has admitted in

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[1] Justice Sanders, 11-2-07 (see *The Docket*, December 07, www.tvw.org).

the press that he resigned before the end of his term because "he firmly believes in judicial appointments to get . . . judges on the bench,"[2] whether the appointment of J. Robert Leach to the Court of Appeals, Division I, is an unconstitutional application of the Governor's power of appointment, because it:

(a) Creates a special class of citizen, who can both cause a special "vetting process" to take place instead of an election, and increase their own say on who attains judicial office;

(b) Debases the prior vote of the people who had rejected J. Robert Leach's election bid to judicial office at the Court of Appeals, Div. I;[3]

(c) Limits the future right of suffrage by placing a non-elected incumbent into the position, where historically there is a marked difference in the people's choice of candidates when a judicial office is "open" versus when that same office has an appointed incumbent?[4]

2. Where this Supreme Court has the ultimate authority in deciding the professional fitness of a

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[2] Everett Herald, published 1-24-07, A26.

[3] "the one clear result of the election was that the voters rejected the petitioner" *State v. Verharen,* 136 Wn.2d 888, 889 969 P.2d 64 (1998).

[4] Suffrage is "undermined as much by limiting whom the people can select as by limiting the franchise itself" *Sorenson v. City of Bellingham,* 80 Wn.2d 547, 552, 496 P.2d 512 (1972).

lawyer or a judge,[5] and where the Governor's decision on the professional "quality" of J. Robert Leach has the effect of negating and nullifying this Supreme Court's pending decision on the professional fitness of J. Robert Leach, and negating the Court of Appeals' finding that "counsel misstated" the law,[6] whether the appointment violates the Separation of Powers Doctrine by allowing an executive decision to override this Court's judicial decision? [*2]

3. Where Governor Gregoire has a duty "to strive to strengthen the quality, efficiency, and image of our judiciary through her appointments" and to ensure that "quality is never compromised for speed"[7], whether Governor neglected this duty when she was aware, before Leach's appointment became effective, that:

   (a) This Supreme Court is currently inquiring into the professional fitness of Mr. Leach;

   (b) The Court of Appeals has already found "counsel misstated" the law, and Mr. Leach lied to the Court of Appeals that this misstatement "was not improper" despite the

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[5] RCW 2.48.060, ELC 2.1, Wash. Const. Art. 4, § 31(5)(6)(8), DJC 1(a).

[6] Supreme Court #80916-0 involves unprecedented abuses by Mr. Leach of professional confidences against former clients, and a *Motion for RAP 18.9 Sanctions* against Leach. Court of Appeals #55842-1-I, 7-9-07 Opinion; Leach lied that the misstatement of law "was not improper" (A150).

[7] Governor's website on Judicial Appointments (A151).

court noting it had been "corrected by Rygg's counsel" back at trial;

(c) Mr. Leach lied to both the Court of Appeals and the Supreme Court during the interlocutory motion to have him and his law film of Anderson Hunter disqualified for abuses of professional confidences against former clients;

(d) Mr. Leach lied under penalty of perjury on questions #38, #41, and #44 in *The Governor's Office's Uniform Judicial Questionnaire.*

4. Where J. Robert Leach is ineligible for judicial office due to his continued practice of law in violation of Washington Constitution Article 4, section 19 and RCW 2.06.090,[8] whether the Governor and/or the Secretary of State neglected their duty to ensure Mr. Leach was eligible for judicial office?

5. Where the Governor and the Secretary of State have a duty to support the Constitutions of the United States and the State of Washington, whether this duty was neglected when the Governor was aware that:

(a) Judge William W. Baker and J. Robert Leach both come from the same law firm of Anderson Hunter;

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[8] This Supreme Court acknowledged Leach is still practicing law before this Court on March 7, 2008 (A172).

(b) Baker is retiring early because he believes in judicial appointment;

(c) This Court is currently inquiring into misconduct by the Anderson Hunter Law Firm;

(d) Leach has name-dropped his appointment in an apparent attempt to use the prestige of judicial office to sway this Court's pending decision on misconduct by the Anderson Hunter Law Firm. [*3]

B. Summary: citizens' right of suffrage has been willfully usurped.

Craig Dilworth, a registered voter in Snohomish County, Washington, asserts that Governor Christine Gregoire's appointment of J. Robert Leach, formerly of the Anderson Hunter Law Firm, to the judicial office in the Court of Appeals, Division I, improperly vacated by Judge William W. Baker, also formerly of the Anderson Hunter Law Firm, is in violation of both the laws and the Constitution of Washington State and the Constitution of the United States. The Governor exceeded her power of appointment in this instance by failing to hold the position vacant for an open election, and instead allowing her power to be manipulated to advance private, political interests over the public interest.

The Governor's power of appointment has at its roots the purpose of "governmental continuity during

emergency periods: Art. 2 Section 42."[9] To extend this power to a means by which a special class of citizens can willfully deny and debase suffrage guaranteed by our laws, "produces an absurd, and . . . unconstitutional, result."[10] As stated by Justice Sanders,

> In our State the people elect their judiciary. I think that's important, because an independent judiciary is a judiciary that is independent from the legislative and the executive branch. And so it is only fitting that we judges owe our tenure to the people themselves – not the politicians. [*4]

(Justice Sanders; see *The Docket* December '07 www.tvw.org.)

Judge Baker fraudulently vacated his office under the guise of "*partly* for health reasons" while admitting his true reason was to advance his private and political aim[11] of denying and debasing the vote of the people, who had rejected J. Robert Leach's prior election bid to this office,

> "He decided to quit before the end of his term because, Baker said, he firmly believes in

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[9] Wash. Const. Art. 3, § 13; appellate court judges: RCW 2.06.080.

[10] Scalia concurrence, *Green v. Bock Laundry Machine Co.*, 490 US. 504, 527 (1989), *also Public Citizen v. U.S. Dept. of Justice*, 491 U.S. 440, 454 (1989).

[11] *State v. Howell*, 70 Wash. 467, 470, 126 P. 954 (1912). (A judge's resignation should not further his own political interests).

judicial appointments to get . . . judges on the bench."

(Everett Herald, published 1-24-07, A26).

Baker's timing to leave his office mere months before his term was set to expire, which would have left an "open" seat, increased his own and other judges' vote.[12] The misapplication of the Governor's power of appointment under these circumstances infringes upon fundamental constitutional rights, including Wash. Const. Art. I, sections 12 and 19.[13]

The Governor has the duty by oath to ensure her acts do not violate the rights of the public or violate our Constitution. The Secretary of State has the duty to protect elections and the right of suffrage against both "sophisticated as well as simple-minded modes" of denial or debasement.[14]

Both failed in their duty. [*5]

The sophistication of Judge Baker's betrayal of the independence of the judiciary is seen by the State's recognition that judicial appointments are rarely, if ever, opposed at the next election.[15] Since it

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[12] " . . . the thoughts of the judges on the bench where the vacancy exists are always considered . . . " Governor's website on "Judicial Appointments" (A152).

[13] *Madison v. State,* 161 Wn.2d 85, 95, 163 P.3d 757 (2007).

[14] *Reynolds v. Sims,* 377 U.S. 533, 563 (1964).

[15] "appointees are often not challenged," Governor's website on "Judicial Appointments" at http://www.governor.wa.gov/judicial/default.asp. (A152).

is the culture amongst the legal profession to not run against judges who were appointed, the citizens' right to suffrage has been effectively denied not only in the present, but also in the future.

The only viable remedy is to void the appointment, hold an election for an "open" seat, and to prohibit such an abuse of power in the future. "An unconstitutional act . . . creates no office."[16]

The Governor, her general counsel's office, and the Secretary of State failed in their duty to ensure Leach was eligible for office. J. Robert Leach was, and is at the time of this filing, ineligible for judicial office. On March 7, 2008, this Supreme Court recognized Mr. Leach is continuing to practice law in cause #81173-3 and #80916-0.[17]

The Governor's decision to appoint Mr. Leach to judicial office is an executive decision on his professional "quality."[18] The Governor was informed on February 13, 2008 that this Supreme Court in cause #80916-0 [*6] has pending decisions on Mr. Leach's professional fitness. The Governor was also informed that the Court of Appeals in cause #55842-1-I found "counsel misstated" the law and that Mr. Leach had

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[16] *State v. Brotherhood of Friends*, 41 Wn.2d 133, 143, 247 P.2d 787 (1952).

[17] Causes consolidated (A172). Wash. Const. Art. 4 § 19 and RCW 2.06.090 prohibit Leach from holding judicial office while practicing law.

[18] Governor's website on "Judicial Appointments" (A152).

lied to the court that this misstatement "was not improper." Despite this knowledge, by rewarding Leach with her appointment, the Governor has determined that her decision on Leach's professional quality overrides this Court's pending decision on Leach's professional fitness.

This Supreme Court – not the executive branch – has the ultimate authority in deciding Mr. Leach's professional fitness. The Governor's negation of this Court's pending decision, before it is even made, is contrary to our Doctrine of Separation of Powers.

Where an inquiry by the Judicial Branch is pending into an applicant's "personal character" and fitness to practice law, the Governor has failed in her duty to the public to ensure the "personal character" and "quality" of her judicial appointee.[19]

The Governor was also informed, prior to her appointment of Mr. Leach becoming effective on March 1, 2008, that Mr. Leach knowingly lied to the Court and lied under penalty of perjury on his *Governor's Office's Uniform Judicial Questionnaire* to questions #38, #41, and #44. [*7]

At a meeting with Carolyn Rygg and Craig Dilworth on April 7, 2006. Governor Gregoire herself

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[19] RCW 2.06.070, though dealing with "original appointments" this RCW still sets a statutory duty on the Governor to ensure "such factors as: Personal character"; the *Governor's Office's Uniform Judicial Questionnaire* also has ensuring this duty as its goal. See also Governor's website (A152).

acknowledged Mr. Leach had lied to both the Court of Appeals and the Supreme Court during the interlocutory motion to have the Anderson Hunter Law Firm disqualified for unprecedented abuses of professional confidences against former clients identified in the record. These abuses of confidences appeared in the record only after the former firm became involved.

At the 2006 meeting, Governor Gregoire reviewed the following conflicting documents showing Leach had lied to the Courts:

(1) The 4-20-05 Bar Complaint response wherein the Anderson Hunter Law Firm admitted "martial arts" was not in the record before the law firm revealed it: " . . . martial arts comment was generated from **off-the-record** conversation." (A35).

(2) Leach's subsequent lie on 10-7-05 to the Court of Appeals that the confidence of "martial arts" revealed against clients was: "trial court testimony . . . He's not referring to anything that was not **already in the record**." (A34).

(3) The 3-15-05 *Declaration of Service of Record of Proceedings,* Docket #86, stamped "RECEIVED" by the Anderson Hunter Law Firm on 3-15-05. (A37). Also the 4-15-05 admission that [*8] the Anderson Hunter Law Firm had the Report of Proceedings: "It was only **provided to me recently** . . . " (A41).

(4) Leach's subsequent lie on 11-6-05 to the Court of Appeals (repeated by reference in

> the Supreme Court) that the Anderson Hunter Law Firm did not have the record:
>
> "the Reinertsens **have not yet been provided** with a complete copy of the Report of Proceedings . . . "
>
> (Leach's *Response to Modify Commissioner's Ruling*, p. 6, A36).

In a letter received by her office on February 13, 2008 (A153), Governor Gregoire was reminded she had reviewed in 2006 these conflicting documents showing Mr. Leach had lied to the Court to evade findings of misconduct by both Leach, and his and Baker's former law firm of Anderson Hunter.

Governor Gregoire was also informed that Baker's circumvention of the vote and success in getting Leach appointed is an apparent attempt by Baker and Leach to use the prestige of the judicial office to influence this Court in the pending case, in the hope of shielding Baker's former law firm of Anderson Hunter from *further* findings of misconduct.[20] Leach has already name-dropped his appointment in case #80916-0, in response [*9] to a motion detailing new instances of dishonesty to the tribunal

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[20] In its 7-9-07 Opinion, the Court of Appeals found the Anderson Hunter Law Firm "misstated" the law (A75). Leach lied on his *Brief of Respondents* that this "was not improper" (A150).

and Leach's attempts to evade the laws properly applicable to that case.[21]

The motion pending this Supreme Court's decision includes details on Leach's lies to evade the unprecedented abuses of professional confidences by the Anderson Hunter Law Firm against former clients; Leach lied in his *Answer to Petition for Discretionary Review* that this was not unprecedented, and lied that RAP 8.1 applies and governs in the case -- his response to the motion does not address these lies.

The manipulation of the Governor's power of appointment has made its application under the above circumstances unconstitutional by: (1) enabling a special class of citizen to change an elected judicial office to one that is appointed by that same class, (2) debasing the prior vote where the people rejected Mr. Leach's election bid to the office, (3) denying and limiting future suffrage, and (4) allowing an executive decision on Mr. Leach's professional quality to negate this Supreme Court's decision on Mr. Leach's professional fitness. [*10]

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[21] *Motion for Judicial Estoppel, Motion to Strike Respondents' Answer; Motion for RAP 18.9 Sanctions* (A4).

C. **The Petitioner alleges:**

I. JURISDICTION AND VENUE.

1.1 The Supreme Court, State of Washington, has subject matter jurisdiction over this matter. RCW 29A.68.011, RAP 16 (b).

II. PARTIES.

2.1 Petitioner resides in the city of Everett, in the county of Snohomish, Washington.

2.2 The Petitioner is a registered voter in Snohomish County.

2.3 The Petitioner voted in the 2005 election in which he and his fellow citizens rejected J. Robert Leach's election bid to the Court of Appeals, Division I.

2.4 Christine Gregoire, Governor, is a state officer.

2.5 Governor Gregoire's office is in Olympia, Washington.

2.6 Sam Reed, Secretary of State, is a state officer.

2.7 Sam Reed is the chief election officer. RCW 29A.04.230.

2.8 Secretary of State Sam Reed's office is in Olympia, Washington.

III. FIRST CLAIM FOR RELIEF

(Fraudulent vacation of office by Judge William W. Baker for express purpose of denying citizens' right to suffrage.)

3.1 Judge William W. Baker, formerly representing Snohomish County on the Court of Appeals, Division I, publicly admitted his [*11] reason for retiring before the end of his term was to circumvent the voters in order to have an appointed judge gain his position:

> "He decided to quit before the end of his term because, Baker said, he firmly believes in judicial appointments to get . . . judges on the bench." (Published in the Everett Herald on 1-24-08, A26).

3.2 Judge William W. Baker fraudulently informed Governor Gregoire his reason for retiring was "for health reasons." (A26).

3.3 The people have a constitutional right to vote for judges in this state.[22]

3.4 By leaving office before the end of his term, Judge Baker was successful in having his position at the Court of Appeals, Division I become an appointed position.

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[22] "once the franchise is granted to the electorate, lines may not he drawn which are inconsistent with the *Equal Protection Clause of the Fourteenth Amenthnent*." *Harper v. Virginia Board of Elections*, 383 U.S. 663, 665 (1966).

3.5 When the last "open" seat with no incumbent in the Court of Appeals, Division I, came before the people of Snohomish County in an election, no less than 7 candidates ran for the office. (11-8-05 General Election for Court of Appeals, Division I, District 2).

3.6 The death of Faye Kennedy that prompted this "open" seat was not considered an emergency to require her office be filled by gubernatorial appointment prior to the next general election. [*12]

3.7 The State admits the culture of the legal profession is that "appointees are often not challenged" at the next election. (A152).

3.8 Judicial appointments are not run against at the next election, i.e. "Mertel, 72, began serving in 1992 when he was appointed by then-Gov. Booth Gardner. He has since served nearly four terms, **all unopposed**." (A166).

3.9 Judge Baker's action of leaving office prior to his term expiring and his success in obtaining his private and political aim of "firmly believ[ing] in judicial appointments" has injured the Petitioner's, and all other eligible voters', fundamental right to suffrage.

3.10 Governor Christine Gregoire was informed by letter, received by her office on February 13, 2008, of Judge Baker's true motive in retiring before the end of his term was to make his position an appointed one.

3.11 Governor Christine Gregoire's failure to withdraw her appointment of J. Robert Leach before it became effective on March 1, 2008 to Judge Baker's judicial office has injured the Petitioner's, and all other eligible voters', fundamental right to suffrage. [*13]

IV. SECOND CLAIM FOR RELIEF.

(Debasement of prior vote where the people rejected J. Robert Leach's election bid to judicial office at the Court of Appeals, Div. I)

4.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

4.2 J. Robert Leach lost his 2005 election bid to judicial office at the Court of Appeals, Division I.[23]

4.3 Mr. Leach included the 2005 rejection by the people as a reason why he should be appointed to judicial office in the same court the people rejected him for, in his *Governor's Office's Uniform Judicial Questionnaire.*

4.4 Judge Baker's action of leaving office prior to his term expiring and his success in obtaining his private and political aim of "firmly believ[ing] in judicial appointments" has injured the Petitioner, and all other eligible voters, by

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[23] "the one clear result of the election was that the voters rejected the petitioner" *State v. Verharen*, 136 Wn.2d 888, 889 969 P.2d 64 (1998).

debasing their vote in the prior election where the people rejected J. Robert Leach for judicial office in the Court of Appeals, Division I.

4.5 Governor Gregoire's appointment of J. Robert Leach over the people's rejection of him to judicial office in the Court of Appeals, [*14] Division I, has injured the Petitioner, and all other eligible voters, by debasing their vote in the prior election.

V. THIRD CLAIM FOR RELIEF

(Creation of a special class of citizen.)

5.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

5.2 Judge Baker's retiring before the end of his term enabled him to choose whether or not his office would have an incumbent, appointed person, or be an "open" seat at the next general election.

5.3 Judge Baker's retiring before the end of his term enabled him to ensure his office would have an incumbent, appointed person, and not be an "open" seat at the next general election.

5.4 The State admits that " . . . the thoughts of the judges on the bench where the vacancy exists are always considered . . . " Governor's website on "Judicial Appointments" (A152).

5.5 Judge Baker's retiring before the end of his term enabled him to unequally increase his

vote on who obtained "the bench" over that of the people who are not judges.

5.6 Judge Baker's retiring before the end of his term enabled him to unequally increase the vote of his fellow judges on who obtained "the bench" over that of the people who are not judges. [*15]

5.7 Judge Baker's action of leaving office prior to his term expiring and his success in obtaining his private and political aim of "firmly believ[ing] in judicial appointments" has created a special class of citizen in the form of judges who can effect future elections by choosing whether their position will have an appointed incumbent or not.

5.8 Governor Gregoire's appointment of J. Robert Leach furthered Judge Baker's creation of a special class of citizen in the form of judges who can effect future elections by choosing whether their position will have an appointed incumbent or not.

VI. FOURTH CLAIM FOR RELIEF

(Ineligibility of J. Robert Leach to hold judicial office due to prohibited practice of law.)

6.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

6.2 J. Robert Leach was not, and is not at the time of this filing, eligible for judicial office.

6.3 The holding judicial office while practicing law is prohibited. Washington Constitution Article 4, section 19 and RCW 2.06.090.

6.4 On March 7, 2008, the Supreme Court acknowledged Mr. Leach was practicing law before it (A172). [*16]

6.5 J. Robert Leach's appointment to judicial office became effective on March 1, 2008.

6.6 On February 13, 2008, Mr. Leach was warned by letter of the prohibition against practice of law and holding judicial office.

6.7 On February 13, 2008, Governor Gregoire was informed of Mr. Leach's ineligibility to assume judicial office due to his overlapping practice of law.

6.8 Petitioner has the statutory right to challenge J. Robert Leach's eligibility for office under RCW 29A.68.020 (2).[24]

6.9 The Governor failed in her duty to ensure Mr. Leach was eligible for judicial office.

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[24] The history of the statutes show the time limits set forth in RCW 29A.68.011 do not apply to "nonprimary elections" – here of course, the issue is that the election process itself has been usurped – nor does the statute "preclude actions which are outside its reach." Additionally, this statutory ground is separate from the "gross violations of the constitution" alleged herein. For all quotes, *see Foulkes v. Hays*, 85 Wn.2d 629, 633-35, 537 P.2d 777 (1975). This action is also brought as a writ of mandamus.

6.10 The Secretary of State failed in his duty to ensure Mr. Leach was eligible for judicial office.

6.11 The Secretary of State failed in his duty to ensure Mr. Leach was eligible to be listed as an incumbent on the February 28, 2008 list of incumbents (A171). [*17]

VII. FIFTH CLAIM FOR RELIEF

(Creation of a judicial dynasty in the Anderson Hunter Law Firm for the improper purpose of attempting to prejudice a pending court inquiry into allegations of misconduct by the law firm and Mr. Leach)

7.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

7.2 J. Robert Leach replaced William W. Baker at the Anderson Hunter Law Firm, as highlighted by the Governor's general counsel's office on Leach's *Judicial Questionnaire*. (A1).

7.3 Judge Baker's success in achieving his private political goal of making his office an appointed office has created a judicial dynasty in the Court of Appeals, Division I, for the Anderson Hunter Law Firm with the appointment of J. Robert Leach, despite the voters' rejection of Mr. Leach to the Court of Appeals, Division I.

7.4 The Supreme Court in case #80916-0 has before it allegations of misconduct by Baker's former law firm of Anderson Hunter, and misconduct

by J. Robert Leach. This includes allegations of misconduct both in the underlying case and new instances in Leach's response to the petition, as detailed in a separate motion.

7.5 The Court of Appeals found misconduct committed by the Anderson Hunter Law Firm in case #55842-1-I, finding counsel [*18] "misstated" the law as alleged, and that this misstatement "corrected" by Ms. Rygg at trial (July 9, 2007 Opinion, A75).

7.6 Prior to the finding by the Court of Appeals of misconduct, Mr. Leach lied to the Court of Appeals that the misstatement of law "was not improper." (Leach's December 7, 2006 *Brief of Respondents,* p. 14, A150).

7.7 The presumptive sanction for a lawyer that knowingly lies to the court is for the lawyer to be disbarred.

7.8 RPC Title 5 makes all partners in a law firm responsible for another partner's violation of the Rules of Professional Conduct if the every partner is aware of the violation and fails to correct it.

7.9 Every partner of the Anderson Hunter Law Firm has been in receipt of a letter on May 21, 2007, informing them of the "misstated" law found by the Court of Appeals prior to the court's finding of misconduct on July 9, 2007. (A49).

7.10 Every partner of the Anderson Hunter Law Firm failed to take remedial action prior to the Court of Appeals finding that the firm

"misstated" the law, as seen in the lack of correction of the misstatement itself or correction of Leach's he that the misstatement "was not improper." [*19]

7.11 On February 13, 2008, Governor Gregoire was informed by letter of the Court of Appeals' finding that the Anderson Hunter Law Firm "misstated" the law, and of Mr. Leach's uncorrected lie that the misstatement "was not improper."

7.12 The "prestige of judicial office" is recognized in our culture as having the potential "ability to advance the private interests of the judge or others." CJC Canon 2(B).

7.13 A reasonable person can see Judge Baker would have a human interest in protecting his former law firm of Anderson Hunter.

7.14 Mr. Leach has name-dropped his appointment in Supreme Court #80916-0, in a motion to extend his response to allegations of new instances of misstating the law and other misconduct. (A67).

7.15 Mr. Leach did not mention any conflict in time with the interview process until after he received his appointment. (A67).

7.16 Judge Baker's leaving office enabled Leach to name-drop his appointment in a court case inquiring into allegations of misconduct by Baker's former law firm of Anderson Hunter.

7.17 The Petitioner's constitutional right to a fair trial in Supreme Court #80916-0 is threatened by Leach's attempt to use the prestige of his

appointment to influence the inquiry into Leach's misconduct. [*20]

7.18 Judge Baker's leaving office before the end of his term and success in having Leach from his former law firm appointed is an attempt to use the prestige of judicial office to influence the pending Supreme Court inquiry into Leach's and the firm's misconduct.

7.19 Leach has mentioned the "collegiality of the court" to the press, and stated Judge Baker exemplifies this "collegiality." (A26).

7.20 On February 13, 2008, Governor Gregoire was informed by letter of the attempt to use the prestige of her appointment to influence the pending Supreme Court inquiry into misconduct by Leach and the Anderson Hunter Law Fiim.

VIII. SIXTH CLAIM FOR RELIEF

(Governor's duty to ensure "personal character" and "quality" of appointee cannot be met due to pending Supreme Court inquiry into misconduct by J. Robert Leach)

8.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

8.2 The Governor has the duty to the Petitioner and public to make the best effort to ensure the "personal character" and "quality" of her judicial appointees.

8.3 The Governor has the duty to the Petitioner and public to make the best effort to ensure her judicial appointees are honest and respectful of our law. [*21]

8.4 The Governor's duty in choosing a judicial appointee is defined in RCW 2.06.070. These standards remain the goal in the screening process, as reflected in the questions asked on the *Governor's Office's Uniform Judicial Questionnaire* and on the Governor's website on Judicial Apppointments.

8.5 Governor Gregoire cannot meet her duty in regards to Leach's character and "quality" while there is a pending Supreme Court inquiry into allegations of Leach's professional misconduct.

8.6 Governor Gregoire has not, until appointing J. Robert Leach, appointed a lawyer who's alleged professional misconduct and disrespect for our law was actively an issue pending in the Courts.

8.7 Governor Gregoire has promised to make every effort to ensure the "quality of the judiciary" and "strives to strengthen the quality, efficiency, and image of our judiciary through her appointments." (A151).

8.8 Governor Gregoire has ensured that in making her judicial appointments "quality is never compromised for speed." (A152). [*22]

IX. SEVENTH CLAIM FOR RELIEF

(Governor failed in her duty due to Leach's lies under penalty of perjury on his *Governor's Office's Uniform Judicial Questionnaire.*)

9.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

9.2 Governor Gregoire failed in her duty to make best efforts to ensure the character and quality of appointee Leach when provided on February 13, 2008 with details of Leach's lies on his *Judicial Questionnaire.*

9.3 One purpose of Question #38 on the *Judicial Questionnaire* is to ensure there are no active complaints pending against the candidate for appointment.

9.4 In answering question #38, Mr. Leach did not "provide details" that Ms. Rygg asked the Bar Association to reconsider, or that the Review Committee had only two members (A149).

9.5 A Review Committee of the Bar Association is required to have "three members each." ELC 2.4 (b).

9.6 In his *Judicial Questionnaire,* Mr. Leach states he practices public agency law in representing "municipal clients." (A1).

9.7 The "failure to appoint the required minimum number of committee members" voids its dismissal under public agency law [*23] such that the 2005 complaint can be reopened even without a future judicial fording of impropriety.[25]

9.8 Mr. Leach's failure to "provide details" of the Review Committee in answering question #38, is apparently because he knows through his experience in public agency law that the Review Committee's dismissal of Ms. Rygg's 2005 complaint was illegal, such that the complaint could be reopened for this reason.

9.9 Governor Gregoire was aware that issues of Leach's conflict of interest with former clients were still active in the courts prior to announcing her appointment of Leach on January 23, 2007.

9.10 Governor Gregoire was aware that issues of Leach's conflict of interest with former clients were still active in the courts prior to his appointment becoming effective on March 1, 2007.

9.11 J. Robert Leach signed his *Governor's Office's Uniform Judicial Questionnaire* under penalty of perjury on August 31, 2007.

9.12 Mr. Leach filed his *Brief of Respondents* in Court of Appeals case #55842-1-I on December 7, 2006.

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[25] *Dodd v. Bannister*, 86 Wn.2d 176, 188, 543 P.2d 237 (1975).

9.13 Mr. Leach's *Brief of Respondents* to the panel of judges at the Court of Appeals responded to disqualification issues due to conflict of interest with Leach's wife's, Vickie Norris's, former [*24] client Carolyn Rygg, and unprecedented identification in the record of abuses of professional confidences reposed with the Anderson Hunter Law Firm during the prior representation.

9.14 At the time of Leach's signing of his *Governor's Office's Uniform Judicial Questionnaire* on August 31, 2007, the issues of conflict of interest and unprecedented abuses of professional confidences by Leach and the Anderson Hunter Law Firm were at reconsideration at the Court of Appeals.

9.15 Mr. Leach was required in question #38 in his *Governor's Office's Uniform Judicial Questionnaire* to "provide details" on any complaint filed "to any bar association."

9.16 In answering question #38, the 2005 bar complaint filed by Carolyn Rygg for "conflict of interest" is mentioned. (A2).

9.17 In answering question #38, Mr. Leach failed to "provide details" that the conflict of interest and identification of abuses of confidence was brought before the panel of judges.

9.18 In answering question #38, Mr. Leach failed to "provide details" that the conflict of interest and identification of abuses of confidence was before the panel of judges on reconsideration at

the time of his signing the *Judicial Questionnaire*. [*25]

9.19 In answering question #38, Mr. Leach failed to "provide details" that the conflict of interest involved unprecedented abuses of professional confidences identified in the record by former clients.

9.20 In answering question #38, Mr. Leach failed to "provide details" that the conflict of interest and abuses of professional confidences involved his wife, Vickie Norris, not simply "another member of my firm."

9.21 In answering question #38, Mr. Leach did not state that the 2005 complaint filed by Ms. Rygg could be "reopened" upon a judicial finding of impropriety.

9.22 A reasonable person reading Mr. Leach's answer to question #38 would assume the 2005 complaint filed by Ms. Rygg could not be reopened on a future judicial finding of impropriety because Mr. Leach states "The Washington Supreme Court denied Ms. Rygg's petition seeking discretionary review" such that it appears there will be no future judicial decision on the disqualification issues.

9.23 In answering question #38, Mr. Leach dishonestly attempted to imply no future judicial finding of impropriety was possible by stating "The Washington Supreme Court denied Ms. Rygg's petition seeking discretionary review" when Mr. Leach was aware, as provided in the Brief of Appellants in case #55842-1-I, that a

[*26] denial of an interlocutory petition for discretionary review does not preclude or prejudice future review.

9.24 In answering question #38, Mr. Leach did not mention that the decision was an interlocutory decision.

9.25 In answering question #38, Mr. Leach did not "provide details" that he obtained the interlocutory decision by knowingly lying to Commissioner Neel on 10-7-05 that the confidence of "martial arts" revealed against Ms. Rygg and Mr. Dilworth was "trial court testimony . . . He's not referring to anything that was not **already in the record**" (A34), where the Anderson Hunter Law Firm had previously admitted the " . . . martial arts comment was generated from **off-the-record** conversation." (A35).

9.26 In answering question #38, Mr. Leach failed to "provide details" that he obtained the denial of the motion to modify and denial of Supreme Court review by lying on 11-6-05, and later by reference, that the Anderson Hunter Law Firm had "**not yet been provided** with a complete copy of the Report of Proceedings . . . " (A36), when on 4-15-05 Mr. Gibbs of the Anderson Hunter Law Firm admitted, "It was only **provided to me recently** . . . " (A41).

9.27 In answering question #38, Mr. Leach failed to "provide details" that Commissioner Neel's decision was based on the false [*27] assumption that RAP 8.1 applied in the case where the $50,000 supersedeas request identified as an abuse of confidences using information gained

from privileged communication with Ms. Rygg's therapists (A71) was dropped by the Anderson Hunter Law Firm when it did not have the effect of its intended litigation tactic of scaring Ms. Rygg into dropping her meritorious appeal. (A72).

9.28 In answering question #38, Mr. Leach failed to "provide details" that he asserted during the interlocutory motion to modify and petition for Supreme Court review that inapplicable RAP 8.1 did apply in the case.

9.29 In answering question #38, Mr. Leach failed to "provide details" that Neel's interlocutory decision was based on an error of law in setting a separate standard for disqualification at the appellate level than at trial level, where no separate standard exists. (A72).

9.30 There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. (Comment 3 to RPC 3.3).

9.31 Question #41 required Mr. Leach to speculate and expound on "anything that may affect" his ability "to perform the duties of a judge." Leach's answer was "No." [*28]

9.32 As detailed in section 7 above, Leach was aware that the Court of Appeals found the Anderson Hunter Law Finn had "misstated" the law, in spite of Leach's lie to the Court that the misstatement "was not improper," and was aware through letters received by him from Mr. Dilworth at the time of his signing the *Judicial Questionnaire* that this finding and his

knowing lies to cover-up the misconduct could have him disbarred; a judge must be admitted to the Bar; Leach lied in answering "No" to question #41. (A3).

9.33 Leach also lied in answering "No" to question #41 by failing to admit that the conflict of interest is still active and the effects of a judicial finding of impropriety.

9.34 On question #44, Leach was required to come forward with "anything in your background or any event you anticipate in the future that *might* be in conflict with the Code of Judicial Conduct"; Leach lied by answering "No." (A3).

9.35 In answering "No" to question #44. Leach lied by not coming forward with the conflict of CJC Canon 5 (F) and his potential (and now actual) continued practice of law.

9.36 In answering "No" to question #44, Leach lied by not coming forward with his lies on questions #38 and #41 and their conflict with CJC Canon 7(B)(1)(C)(iii) that prohibited Leach from lying [*29] on any fact concerning himself "made in the process of securing judicial office."

9.37 In answering "No" to question #44. Leach lied that his appointment to an office purposely vacated by Judge Baker to usurp the vote and hand over tenure of the judiciary to the executive branch and a special class of citizen, is in potential conflict with CJC Canon 1, Canon 2(A) and (B), and Canon 3(A).

9.38 In answering "No" to question #44, Leach lied that he intended to name drop his appointment

in an attempt to use the prestige of the office to influence an active Court inquiry into allegations of his professional conduct, in potential conflict with CJC Canon 2(B).

X. EITH CLAIM FOR RELIEF

(Governor Gregoire failed in her duty due to her personal review and acknowledgement in 2006 of lies Leach made to the Court.)

10.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

10.2 On April 7, 2006, Governor Gregoire met with Carolyn Rygg and Craig Dilworth.

10.3 Governor Gregoire and Carolyn Rygg were sorority sisters in college, Rygg's twin sister was Gregoire's "big sister" in the sorority. [*30]

10.4 At the 2006 meeting, Governor Gregoire reviewed the documents detailed in sections 9.18 and 9.19, and acknowledged the inconsistencies showed knowing lies had been made to the Court.

10.5 At the 2006 meeting, Governor Gregoire may not have been aware that the person making the lies was J. Robert Leach as the discussion dealt more with the abuses being committed on the Court than with the lawyers committing the abuses.

10.6 On February 13, 2008, Governor Gregoire was reminded of the 2006 meeting; her acknowledgement of lies having been committed on the Court, and that the lawyer committing the lies she reviewed documents exposing was the same J. Robert Leach she recently appointed.

10.7 Governor Gregoire failed in her duty to make her best effort to ensure the character and quality of Leach by not withdrawing her appointment of him after being reminded she had acknowledged herself that Leach is dishonest, and had knowingly lied to the Court.

XI. NINTH CLAIM FOR RELIEF

(Governor Gregoire failed in her duty to ensure her power of appointment was not misapplied for unconstitutional purposes.)

11.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges: [*31]

11.2 Governor Gregoire has the duty by oath of office to not apply, or allow to be applied, her power of appointment for unconstitutional purposes.

11.3 Governor Gregoire failed in her duty to protect against an unconstitutional misapplication of her appointment powers.

XII. TENTH CLAIM FOR RELIEF

(Secretary of State Sam Reed neglected his duty as chief elections officer to ensure the Governor's application of her appointment power did not infringe upon the people's right to suffrage.)

12.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

12.2 Secretary of State Sam Reed neglected his duty as chief elections officer to ensure the Governor's application of her appointment power did not infringe upon the people's right to suffrage.

12.3 In addition to the prior constitutional challenges, the Petitioner has standing to assert Sam Reed's neglect of duty under RCW 29A.68.011 (5).

XIII. ELEVENTH CLAIM FOR RELIEF

(Judge Baker's successful scheme to leave office before the end of his term in order to usurp the people's right of suffrage, made him in practical effect an elections official, and constitutes a "wrongful act.")

13.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges: [*32]

13.2 Judge Baker's ability to choose whether or not his position would be filled by an appointed incumbent prior to the next general election gave

him the practical status of an election official (that can place incumbents on the ballots of an election).

13.3 Judge Baker's committed a "wrongful act" in leaving office before the end of his term in order to purposely make his position an appointed one.

13.4 In addition to the constitutional grounds previously raised, the Petitioner has standing to challenge Judge Baker's wrongful act of timing his retirement to advance private political interests under RCW 29A.68.011 (4).

XIV. TWELF CLAIM FOR RELIEF

(The Governor's violation of the Doctrine of Separation of Powers on her decision to override this Court's pending decision on Mr. Leach's professional fitness).

14.1 Petitioner re-alleges and incorporates by reference all preceding paragraphs as if fully set forth herein and further alleges:

14.2 The Governor's appointment of Mr. Leach was an executive decision on his professional "quality."

14.3 The Governor has overridden the Court of Appeals' finding that "counsel misstated" the law, and Mr. Leach's lie that this misstatement "was not improper." [*33]

14.4 The Governor has overridden this Supreme Court's pending decision on the professional fitness of Mr. Leach.

14.5 The Supreme Court, not the executive branch, has the ultimate authority in deciding a lawyer's or judge's professional fitness.

14.6 The Governor's decision on Mr. Leach's professional quality by appointing him to judicial office despite prior and pending judicial decisions on his fitness is an unconstitutional violation of the Doctrine of Separation of Powers.

D. Prayer.

WHEREFORE, the petitioner asks the Court for relief as follows:

1. That the Governor's of appointment of J. Robert Leach in this instance be voided.

2. That the Secretary of State remove J. Robert Leach from all ballots and election listings as an incumbent in judicial office in the Court of Appeals, Division I.

3. That the judicial office vacated by Judge Baker remain vacant until the next general election, where it will be listed as an "open" position with no incumbent.[26] [*34]

4. The Petitioner reserves the right to seek leave to amend the Petition pursuant to CR 15.

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[26] *Foulkes v. Hays, Supra.* at 633.

Respectfully submitted this 17th day of March, 2008.

_____/S/_____
Craig Dilworth
Petitioner, pro se
3225 Shore Avenue
Everett, WA 98203
(425) 353-7120

Oath:

I declare under penalty of perjury under the laws of Washington State that the information provided by me in the above election challenge and writ of mandamus is true and correct to the best of my knowledge, and that the allegations herein stated are based upon my own knowledge of the facts.

_____/S/_____
Craig Dilworth
Signed on March 17, 2008

[condensed format copy from
electronic original; appendix omitted]

Original Action #81319-1:

IN THE SUPREME COURT
OF THE STATE OF WASHINGTON

CRAIG DILWORTH, Registered voter

in Snohomish County, Washington

Petitioner

vs.

CHRISTINE GREGOIRE, Governor
of the State of Washington

and

SAM REED, Secretary of State
of the State of Washington

Respondents

MOTION TO MODIFY CLERK'S RULING DISMISSING MOTION TO VACATE JUDGEMENT IN AN ORIGINAL ACTION, NOT AN APPEAL

Craig Dilworth,
Pro se
3225 Shore Avenue
Everett, WA 98203
(425) 353-7120

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I. PARTY FILING MOTION TO MODIFY CLERK'S RULING.

Petitioner Craig Dilworth submits this *Motion* per RAP 17.7.

VII. DECISION TO BE MODIFIED/RELIEF SOUGHT.

Mr. Dilworth respectfully requests modification of the clerk's 'ruling' of October 6, 2008 dismissing the *Motion to Vacate Judgment* by having it "placed in the

closed file and no further action taken as to it." (Clerk Carlson's 'ruling', 10-6-08, hereafter "*Clerk's Ruling*", A1).

VIII. ISSUE: DO CIVIL RULES APPLY TO AN ORIGINAL ACTION IN THE SUPREME COURT?

Do the Civil Rules apply to an original action in the Supreme Court, where the Rules of Appellate Procedure adopt the "Superior Court Civil Rules" for original actions in the Supreme Court? (RAP Title 16, "*Special Proceedings in the Supreme Court*").

IX. FACTS: THIS IS AN ORIGINAL ACTION.

This is an original action. An original judgment was entered.

This action is not an appeal. No mandate was issued.

The *Clerk's Ruling* does not consider that this is an original action and not an appeal, where it states the civil rules "only apply to civil proceedings in a superior court." The *Clerk's Ruling* makes no mention that RAP Title 16 adopts the "Superior Court Civil Rules" for original actions filed in the Supreme Court.

RAP 16.2(d) does not state the criteria on which Respondents' *Motion to Dismiss* was based: lack of jurisdiction, CR 12(b)(1); lack of claim, CR 12(b)(6); and failure to join a party, CR 12(b)(7). [*2]

X. ARGUMENT WHY CIVIL RULES APPLY TO ORIGINAL ACTIONS AS ADOPTED BY RAP TITLE 16.

A. Summary: The Clerk's Ruling is wrong; CR do apply here.

The *Clerk's Ruling* is wrong that the civil rules "only apply to civil proceedings in a superior court," where RAP Title 16 specifically adopts the civil rules for original actions in the Supreme Court. If the civil rules did not apply, the Supreme Court would be unable to take original actions without re-codifying all of the civil rules as appellate rules for "special proceedings." This is an original action; the *Ruling* should be modified.

RAP Title 16 adopts the Civil Rules to original actions in the Supreme Court, both specifically and by necessary implication. RAP 16.2(b) specifically adopts the "Superior Court Civil Rules" rather than re-codify them for original actions in the Supreme Court. RAP 16.2(d) lists decisions to be made by a commissioner or clerk that would be without any rules unless the Civil Rules were adopted, including the Civil Rules on dismissal relied on by Gregoire and Reed (CR 12(b)). Fact finding under RAP 16.2(d), whether by a master or "superior court," necessarily adopts the Civil Rules since the Rules of Appellate Procedure do not allow for such procedures as discovery. RAP 16.2(e) refers back to 16(d).

The issues are also cognizable under RAP 12.9(b), but the *Ruling* puts form before function and rule

number before justice. Modification should be granted to determine vacation on its merits. RAP 1.2(a).

[*3]

B. The civil rules for vacating an original judgment are better suited than the appellate rules for recalling a mandate, because this is an original action with an original judgment.

There must be some means in an original action before the Supreme Court to correct mistakes and remedy fraud, as these are grounds to vacate both an original judgment and an appellate mandate.

The civil rules for vacating an original judgement are better suited to this original action than the appellate rule for recall of mandate, for the simple fact that this is not an appeal and there is no mandate to recall.

Vacating an original judgment under CR 52(d), for lack of required findings, is to make an appeal of an original judgment judicially efficient as well as to meet due process (*Motion to Vacate Judgment,* p. 7). Reasons to support this original judgment are needed for appellate review of the issues pleaded, rather than an appeal that decision itself is arbitrary.

Vacating under the universal rules of our CR 60, identical to the federal rules for vacation of original judgments as well as the other states' rules, is appropriate for this original judgment. *Consolidation Coal*

Co. v. Jarrett, No. 371 Ohio App. 7d 1, 2 (1983) (relief from judgment in the Courts of Appeals under Civil Rule 60 "may be filed only in an original action . . . [An original action] is the only instance where the Courts of Appeals specifically adopt the civil rules . . . There was never an intention by the rulemakers to generally impress the rules of civil procedure upon the Appeals Courts in **appellate** matters," emphasis added, A2). [*4]

This is not an "appellate matter," so a recall of mandate does not fit this original action whereas relief from judgment does.

Of course, there is overlap in purpose between recall of mandate under RAP 12.9(b) and relief from judgment under CR 60. RAP 12.9(b) is to "correct mistake" as pleaded in the *Motion to Vacate Judgment* under CR 60(b)(1) at page 9, section "*C: Mistake of confusing Claims #7 and #8 as requesting adjudication of issues in cause #80916-0, when they do not.*" RAP 12.9(b) is also to "remedy fraud" as pleaded under CR 60(b)(4) for Gregoire's and Reed's fraudulent assertions that this court lacks jurisdiction to review a pleaded unconstitutional application of Gregoire's appointment duty, as well as fraudulent misrepresentations of the law relevant to this action (*Motion to Vacate Judgment,* p. 8).

Whether the judgment is void due to violations of due process is not restricted to vacation under CR 60(b)(5) (*Motion to Vacate,* p. 14). A void judgment can be attacked at any time, in any court. *Long v.*

Shorebank Development Corp., 182 F.3d 548 (C.A. 7 Ill. 1999),

> "A void judgment which includes judgment . . . procured by fraud, can be attacked at any time, in any court, either directly or collaterally, provided that the party is properly before the court."

The *Clerk's Ruling* should be modified because the bases to vacate are encompassed by both the Civil Rules and the Rules of Appellate Procedure, and are also bases in equity under the *Fourteenth Amendment*. [*5]

VI. CONCLUSION.

For the reasons stated above, this Court should modify the *Clerk's Ruling* that the Civil Rules "only apply to civil proceedings in a superior court" and do not apply to original actions in the Supreme Court as adopted by RAP Title 16. This Court should decide the *Motion to Vacate Judgment* on its merits, which are cognizable under both our Civil Rules and Rules of Appellate Procedure, as well as common equity under the *Fourteenth Amendment*.

Respectfully submitted this 14th day of October, 2008.

/s/ Craig Dilworth
Craig Dilworth
Petitioner, *pro se*
(contact info on cover)